



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
STANLEY H. GOLDSMITH }

For Appellant: Stanley H. Goldsmith, in pro. per,

For Respondent: Burl D. Lack, Chief Counsel;  
Peter S. Pierson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Stanley H. Goldsmith against proposed assessments of additional personal income tax in the amounts of \$98.96 and \$42.00 for the years 1959 and 1960, respectively.

Sometime before 1956, while Stanley H. Goldsmith (hereafter appellant) was employed as a unit manager of a motion picture production on location in Spain, he became acquainted with a Spanish boy named Manuel Ruiz. The boy's father had died years before and his mother was very ill. Before returning to California in 1956, appellant executed a document in Madrid in which he agreed to bring Manuel to the United States for his education and to pay all his expenses and to maintain full responsibility for him while he was here. The document contained the written consent of Manuel's mother to the arrangement, but she retained the right to end the agreement. The boy, who was 16 years old in 1956, continually resided with appellant at his home in Pacific Palisades and received his sole support from the appellant while attending school. Manuel graduated from the University of California at Los Angeles and has been drafted into the United States Army..

On his 1959 return, appellant, a bache lor ,claimed an exemption as the head of a household based upon the fact that Manuel resided with him and was a dependent. On his return for 1960, appellant did not claim the head of a household exemption but did claim Manuel as a dependent.

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The precise point to be determined is whether Manuel was appellant's "legally adopted child" within the meaning of sections 17043 and 17183 of the Revenue and Taxation Code. Only if he is, will he then be considered a child of the appellant and a "dependent" under section 17182. This would also qualify appellant for an exemption as the head of a household as defined by section 17042, during the time that Manuel lived with him. If Manuel is not appellant's legally adopted child, then appellant cannot qualify for either the head of a household or dependency exemption,

Adoption has been defined generally as a proceeding by which the adopting parent assumes a parental relationship toward the child of another. (Marshall v. Marshall, 196 Cal. 761 [239 P.36].) Further illustrating the concept of adoption, the Civil Code of California provides that an adoptive parent and adopted child sustain the legal relation of parent and child with all the rights and duties of that relation (Civ. Code, §228), and that the natural parents are relieved of all parental duties and have no right over the child, (Civ. Code, § 229.)

Assuming that the agreement in question was valid in Spain, where it was executed, and that it may be given recognition here, it does not purport to create the relationship of parent and child. On its face, it is a temporary arrangement for custody and support, terminable at will by Manuel's mother. It contains no provision, express or implied, that Manuel is to be appellant's heir. The United States Tax Court has held that arrangements similar to this did not fulfill the requirement of legal adoption for purposes of the dependency exemption under the Internal Revenue Code of 1939. (Russell Sanners McCann, 12 T.C. 239; M. D. Harrison, 18 T.C. 540; Arthur Grossman, 26 T.C. 234.)

The present federal statutes providing for the head of household and dependency exemptions do not require any particular relationship between the child or other person who is supported by the taxpayer and is a member of his household, except that the relationship must not be illicit, (Int. Rev. Code of 1954, §§ 1(b):, (2), 152(a)(9), 152(b)(5).) But this modified approach has never been incorporated into the California law,

The humanitarian efforts of the appellant are worthy of the greatest praise and respect, but the exemption is not allowed by the code,

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code that the action of the Franchise Tax Board on the protest of Stanley H. Goldsmith against the proposed assessments of additional personal income tax in the amounts of \$98.96 and \$42.00 for the years 1959 and 1960, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of October, 1964, by the State Board of Equalization,

Paul R. Leakey, Chairman  
John W. Lynch, Member  
Richard Stein, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member

Attest:

W. Freeman

Secretary